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硕 士 学 位 论 文

论补充性解释方法在 WTO 争端解决中的适用

A Study on the Application of Supplementary Means of
Interpretation in WTO Dispute Settlement

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内容摘要

在 WTO 的实践中，对于如何确定成员方的权利和义务，一直是争端解决机制需要面对的一个问题。条约的解释方法，就是来确定权利和义务的一个重要工具。争端解决机构需要按照《维也纳条约法公约》中规定的解释方法来解释成员方间的条约或协议，从而来确定成员方的权利和义务。

本文将通过实证研究的方法，考察《维也纳条约法公约》第 32 条的补充性解释方法在 WTO 争端解决机制（主要是上诉机构）中的适用实践，分析了实践中存在的问题，并结合理论对补充性解释方法进行再探讨，总结了影响补充性解释方法适用结果的主要因素，为解释者更好地适用补充解释方法提供指引。

除引言和结语外，本文共分为三章。

第一章从介绍补充性解释方法的范围和适用情况出发，结合条约解释学派的学说和补充性解释方法的历史对其作简要介绍，为下文的论述奠定基础。

第二章主要通过实证研究的方法，按照不同的适用结果对补充性解释方法的实践进行汇总，并对不同适用结果的案件进行分析。

第三章是对补充性解释方法在 WTO 争端解决适用实践中的反思，首先对补充性解释方法在 WTO 争端解决适用的现状与存在的问题进行了评析，然后结合理论提出了上诉机构不能够以补充性解释方法的次要性为由而拒绝考察的观点，探讨了补充性解释方法与其他解释方法之间的关系，进一步强调了必要时适用补充性解释方法的重要性，最后对在适用实践中影响适用结果的主要因素进行了探讨与总结。

关键词：补充性解释方法；WTO 争端解决；条约解释

ABSTRACT

In the WTO dispute settlement, it is a key issue to determine the rights and obligations of members of the parties. The means of interpretation is an important tool to determine the rights and obligations, since the dispute settlement body needed to interpret and explain provisions at issue in accordance with the methods codified in VCLT thereby to determine the rights and obligations of members of the party.

This article scrutinizes the application of supplementary means of interpretation of article 32 in the WTO dispute settlement mechanism (mainly the Appellate Body) through the method of empirical research, analyzes practice problems and reviews the supplementary means of interpretation from the theoretical perspective. It also discusses the factors resulting in the failure to apply the supplementary means of interpretation in order to help the interpreter make better use of supplementary means of interpretation.

In addition to the introduction and conclusion, this thesis is divided into three chapters.

Chapter 1 generally discusses the basic theory of treaty interpretation, describes the scope and conditions of supplementary means of interpretation, and introduces the main treaty interpretation schools and the history supplementary means to lay the foundation for the discussion below.

Chapter 2 mainly uses the empirical research method to group and analyze these cases by the results of the practice of supplementary interpretation.

Chapter 3 is a reflection on the application of supplementary means of interpretation in WTO dispute settlement. At the outset, it analyzes the current situation of application and the problems in the process of application and put forward an opinion that the Appellate Body could not reject the examination of supplementary means of interpretation only because they think it is not necessary to have recourse to it. It also explores the relationship between the supplementary means of interpretation with other means of interpretation and further emphasizes the importance of

application of supplementary means of interpretation when it is necessary, and finally the main factors that affect the result of application are analyzed and summarized.

Key words: Supplementary Means of Interpretation; WTO dispute settlement; Treaty Interpretation

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缩略语表 Abbreviations

| | |
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| WTO: | World Trade Organization 世界贸易组织 |
| VCLT: | Vienna Convention on the Law of Treaties 《维也纳条约法公约》 |
| DSU: | Understanding on Rules and Procedures Governing the Settlement of Disputes 《关于争端解决规则与程序的谅解》 |
| GATS: | The General Agreement on Trade in Services 《服务贸易总协定》 |
| GATT: | General Agreement on Tariffs and Trade 《关税及贸易总协定》 |
| SCM: | Agreement on Subsidies and Countervailing Measures 《补贴与反补贴措施协议》 |
| ILC: | International Law Commission 联合国国际法委员会 |
| ITO: | International Trade Organization 国际贸易组织 |
| ICJ: | International Court of Justice 国际法院 |

案例表 Table of Cases

| | | |
|----------------------------------|---|---------------------------|
| 日本——酒税案 | Japan—Taxes on Alcoholic Beverages | WT/DS8;WT/DS10;WT/DS11 |
| 欧共体——香蕉案 III（厄瓜多尔）（第 22.6 条—欧共体） | European Communities—Regime for the Importation, Sale and Distribution of Banana | WT/DS27 |
| 欧共体——计算机设备案 | European Communities—Customs Classification of Certain Computer Equipment | WT/DS62; WT/DS67; WT/DS68 |
| 美国——虾及虾制品案 | United States—Import Prohibition of Certain Shrimp and Shrimp Products | WT/DS58 |
| 欧共体——禽类产品案 | European Communities—Measures Affecting Importation of Certain Poultry Products | WT/DS69 |
| 韩国——酒精饮料税案 | Korea—Taxes on Alcoholic Beverages | WT/DS75; WT/DS84 |
| 印度——农产品、纺织品和工业产品案 | India—Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products | WT/DS90 |
| 加拿大——乳制品案 | Canada—Measures Affecting the Importation of Milk and the Exportation of Dairy Products | WT/DS103; WT/DS113 |
| 美国——《综合拨款法》第 211 节案 | United States—Section 211 Omnibus Appropriations Act of 1998 | WT/DS176 |
| 智利——价格幅度制度案（第 21.5 条—阿根廷） | Chile—Price Band System and Safeguard Measures Relating to Certain Agricultural Products | WT/DS207 |

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| 美国——碳钢案 | United States—Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany | WT/DS213 |
| 欧共体——发展中国家关税优惠案 | European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries | WT/DS246 |
| 美国——软木 V 案 | United States—Final Dumping Determination on Softwood Lumber from Canada | WT/DS264 |
| 美国——陆地棉花补贴案 | United States—Subsidies on Upland Cotton | WT/DS267 |
| 美国——赌博案 | United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services | WT/DS285 |
| 欧共体——无骨鸡肉案 | European Communities—Customs Classification of Frozen Boneless Chicken Cuts | WT/DS269; WT/DS286 |
| 美国——不锈钢案（墨西哥） | United States—Final Anti-dumping Measures on Stainless Steel from Mexico | WT/DS344 |
| 美国——继续归零案 | United States—Continued Existence and Application of Zeroing Methodology | WT/DS350 |
| 中国——出版物和音像制品案 | China—Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products | WT/DS363 |
| 美国——反倾销反补贴税（中国）案 | United States—Definitive Anti-Dumping and Countervailing Duties on Certain Products from China | WT/DS379 |

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| 欧盟——紧固件案 | European Communities–Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China | WT/DS397 |
| 美国——空中客车 案（第二次诉讼） | United States–Measures Affecting Trade in Large Civil Aircraft (Second Complaint) | WT/DS353 |
| 欧共体——海豹案 | European Communities–Measures Prohibiting the Importation and Marketing of Seal Products | WT/DS400; WT/DS401 |

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